

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LESLIE A. STROTH

PART

12M

Justice

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JAMES E. BYRNES,

Plaintiff,

- v -

LAURA KAVANAGH, THE BOARD OF TRUSTEES OF THE
NEW YORK CITY FIRE DEPARTMENT ARTICLE I-B
PENSION FUND, LOUIS LOMBARDI, JAMES LYNCH,
DAMIAN MARTINO, PETER NEUMANN, ALAN DAVID,
VENKATESHA REDDY, LAWRENCE SCHARER

Defendant.

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INDEX NO. 152531/2024MOTION DATE N/AMOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57

were read on this motion to/for

ARTICLE 78 (BODY OR OFFICER)

Petitioner James E. Byrnes brings this Article 78 proceeding against The Board of Trustees of the FDNY ("the Board"), the New York City Fire Pension Fund ("Pension Fund") and Laura Kavanagh ("Kavanagh"), the Fire Commissioner of the FDNY and the Chairperson of the Board of Trustees of the Pension Fund, (collectively "Respondents"). Petitioner moves to annul Respondents' denial of his application for accident disability retirement pursuant to the City of New York Administrative Code § 13-353.

For the reasons stated below, Petitioner's application is granted, and the matter is remanded to respondents for reconsideration consistent with this decision of the Court.

BACKGROUND FACTS AND PROCEDURAL HISTORY

Petitioner is a former firefighter with the New York City Fire Department ("FDNY") who joined the FDNY in 1978 and retired in 2020 (NYSCEF Doc No. 2 ¶ 9). Over the course of his

career, Petitioner sustained no fewer than fourteen (14) documented line-of-duty injuries. Of these injuries, twelve (12) involved his lower back, and nine (9) involved his right knee. Notably, seven (7) of these incidents involved both his lower back and right knee. The dates and nature of these injuries are summarized as follows:

Date of Injury	Nature of Injury
3/14/1979	Sprained lower back
6/14/1980	Bruised Lower back
1/24/1996	Bruised lower back
3/23/1997	Strained lower back
6/6/2000	Sprained right knee
6/3/2001	Sprained lower back; sprained/twisted right knee
5/25/2003	Sprained/twisted lower back; sprained/twisted left knee
11/14/2004	Sprained/twisted right knee
10/29/2006	Sprained lower back, twisted right knee
4/6/2009	Sprained/twisted lower back, sprained right knee
7/2/2009	Sprained lower back, sprained right knee
4/11/2012	Sprained/twisted lower back, sprained/twisted right knee; sprained/twisted right shoulder
7/18/2018	Bruised lower back; sprained right knee
8/24/2019	Sprained/Twisted Right Knee; Sprained Left Thumb Sprained Right Shoulder; Sprained Lower Back

On July 7, 2020, the FDNY's Bureau of Health Services determined that Petitioner was disabled due to conditions of the lumbar spine and right knee arising from the injury sustained on August 24, 2019. Following that injury, Petitioner was diagnosed with a "partial permanent disability" and was placed on limited service status.

Petitioner thereafter submitted an application for Accidental Disability Retirement ("ADR") benefits pursuant to New York City Administrative Code § 13-353, asserting that his disabling conditions were incurred in the performance of his duties as an FDNY firefighter.

The Medical Board of the FDNY Pension Fund acknowledged that Petitioner was disabled due to both a lumbar spine condition and a right knee condition. Nevertheless, the Medical Board denied Petitioner's application for Accidental Disability Retirement, asserting that his disabilities were unrelated to his prior fourteen (14) service-connected injuries, including the August 24, 2019, incident. The Medical Board issued determinations to this effect on multiple dates, including January 22, 2021; January 27, 2021; December 3, 2021; October 7, 2022; June 21, 2023; June 23, 2023; and November 3, 2023 (NY St Cts Elec Filing [NYSCEF] Doc Nos. 8-16).

Petitioner is currently receiving Ordinary Disability Retirement (ODR) benefits pursuant to New York City Administrative Code §§ 13-352 and 13-353. However, Petitioner maintains that he is entitled to ADR benefits, which provide a higher retirement allowance and are awarded where the disability is the natural and proximate result of a service-related accident.

Petitioner commenced this Article 78 proceeding arguing that respondents' denial of his application should be annulled because the Medical Board did not satisfactorily consider Petitioner's prior service-connected injuries as precipitating factors leading to his disability and retirement. Petitioner cites to *Tobin v Steisel*, 64 NY2d 254, 255 [1985] for the proposition that "an accident which precipitates the development of a latent condition or aggravates a preexisting condition is a cause of disability within the meaning of Administrative Code of the City of New York." Petitioner states that the Medical Board ignored the connection between the prior line of duty injuries and Petitioner's subsequent permanent disability.

Respondent, in turn, argues that they reviewed and documented all of Petitioner's provided medical records, did an examination on Petitioner and still rationally concluded that Petitioner's August 24, 2019 injury was not the proximate cause of Petitioner's permanent disability. Instead, Respondent argues that they considered and re-considered Petitioner's case on

numerous occasions citing to all documents that Petitioner provided and that this court's scope of review should defer to the Medical Board to medical disability and causation. (*Meyer v. Bd. of Trs. of the New York City Fire Dep't*, 90 N.Y.2d 139, 147 (1997).

DISCUSSION

“In reviewing an administrative agency determination, [courts] must ascertain whether there is a rational basis for the action in question or whether it is arbitrary and capricious” (*Matter of Murphy v New York State Div. of Hous. and Community Renewal*, 21 NY3d 649, 652 [2013] [citations omitted]). An action is deemed arbitrary and capricious “when it is taken without sound basis in reason or regard to the facts” (*id.*).

“Ordinarily, a Medical Board's disability determination will not be disturbed if the determination is based on substantial evidence” (*Matter of Borenstein v New York City Employees' Retirement Sys.*, 88 NY2d 756, 760 [1996]; *see also Macri v Kelly*, 92 AD3d 53, 59 [1st Dept 2011], *aff'd sub nom. Matter of Bitchatchi v Board of Trustees of the NY City Police Dept. Pension Fund*, 20 NY3d 268 [2012]; *Matter of Hipple v Ward*, 146 AD2d 201, 207 [1st Dept 1989]). “While the quantum of evidence that meets the ‘substantial’ threshold cannot be reduced to a formula, in disability cases the phrase has been construed to require ‘some credible evidence’” (*Matter of Borenstein*, 88 NY2d at 760 [emphasis added]). If the medical board's finding is supported by “some credible evidence,” courts have found that the decision was not arbitrary and capricious (*Smith v Shea*, 209 AD3d 601, 602 [1st Dept 2022] [emphasis added and citations omitted]; *see also Ramos v O'Neill*, 210 AD3d 511 [1st Dept 2022]; *Matter of Rodriguez v Kelly*, 8 AD3d 70 [1st Dept 2004]).

“Credible evidence ‘is evidence that proceeds from a credible source and reasonably tends to support the proposition for which it is offered’” (*Matter of Bitchatchi*, 20 NY3d at 281 [internal

citations omitted].; *see also McAuley v Kelly*, 103 AD3d 449, 451 [1st Dept 2013] [citations omitted]). Such evidence “must be evidentiary in nature and not merely a conclusion of law, nor mere conjecture or unsupported suspicion” (*Matter of Bitchatchi*, 20 NY3d at 281 [internal citations omitted]).

Despite acknowledging that Petitioner was, in fact, disabled as a result of injuries to the lumbar spine and right knee, the Medical Board concluded that these disabling conditions were not causally related to any of Petitioner’s fourteen service-related injuries—including the most recent one on August 24, 2019. The Board’s denial of ADR benefits rested on the position that Petitioner’s disabling conditions were not the natural and proximate result of his FDNY service.

The Court finds that the Medical Board’s determination lacks a rational basis and fails to reflect an analysis of the Petitioner’s extensive medical and service history. The record includes documented and repeated injuries to the same anatomical regions now found to be the cause of Petitioner’s disability. The Medical Board’s conclusion—that these injuries are completely unrelated to the Petitioner’s present disabling conditions—appears conclusory and unsupported by any specific medical explanation distinguishing the cumulative impact or causation of those prior injuries.

Further, the Medical Board’s determination does not meaningfully address the July 7, 2020, finding by FDNY’s Bureau of Health Services, which attributed Petitioner’s disability to his August 24, 2019, injury—a decision grounded in contemporaneous medical evidence. The record is devoid of any analysis refuting the causal connection or explaining how such a finding should be disregarded. The absence of such discussion renders the determination arbitrary and capricious.

While courts must defer to medical expertise when it is supported by “some credible evidence,” such deference is not warranted when, as here, the conclusion appears to be based on generalities or unexplained rejection of documented injuries and findings from the same agency. The failure to sufficiently reconcile all of the medical and factual elements, including Petitioner’s long record of line-of-duty trauma to the exact body parts now causing his disability, compels remand.

The court has considered the remaining arguments and finds such unavailing.

CONCLUSION

Accordingly, it is hereby

ORDERED, that the petition is granted in that Petitioner’s application for Accidental Disability Retirement (ADR) benefits shall be remanded back to respondents for reconsideration consistent with this decision of the Court.

The foregoing constitutes the decision and order of the Court.

7/2/2025

DATE

CHECK ONE:

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CASE DISPOSED

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GRANTED

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DENIED

APPLICATION:

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SETTLE ORDER

CHECK IF APPROPRIATE:

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INCLUDES TRANSFER/REASSIGN



HON. LESLIE A. STROTH
J.S.C.

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NON-FINAL DISPOSITION

☐

GRANTED IN PART

☐

OTHER

☐

SUBMIT ORDER

☐

FIDUCIARY APPOINTMENT

☐

REFERENCE